

Small Business Administration

§ 107.720

your lack of cooperation or the condition of your records, SBA may assess an additional fee of up to \$500 per day.

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Subpart G—Financing of Small Businesses by Licensees

DETERMINING THE ELIGIBILITY OF A SMALL BUSINESS FOR SBIC FINANCING

§ 107.700 Compliance with size standards in Part 121 of this chapter as a condition of Assistance.

You are permitted to provide financial assistance and management services only to a Small Business. To determine whether an applicant is a Small Business, you may use either the financial size standards in § 121.301(c)(1) of this chapter or the industry standard covering the industry in which the applicant is primarily engaged, as set forth in § 121.301(c)(2) of this chapter.

§ 107.710 Requirement to finance Smaller Businesses.

Your Portfolio must include Financings to Smaller Businesses.

(a) *Definition of Smaller Business.* A Smaller Business means a business that:

(1) Together with its Affiliates has a net worth of not more than \$6.0 million and average net income after Federal income taxes (excluding any carry-over losses) for the preceding two years no greater than \$2.0 million; or

(2) Both together with its affiliates, and by itself, meets the size standard of § 121.201 of this chapter at the time of the Financing for the industry in which it is then primarily engaged.

(b) *Phase 1 of Smaller Business Financing requirement.* At the close of your first complete fiscal year beginning on or after April 25, 1994, at least 10 percent of the total dollar amount of the Financings you extended since April 25, 1994 must have been in Smaller Businesses.

(c) *Phase 2 of Smaller Business Financing requirement.* At the close of each of your next fiscal years, at least 20 percent of the total dollar amount of the Financings you extended since April 25, 1994 must have been invested in Smaller Businesses.

(d) *Financing a change of ownership which results in the creation of a Smaller Business.* The Financing of a change of ownership under § 107.750 which results in the creation of a Smaller Business qualifies as a Smaller Business Financing.

(e) *Non-compliance with this section.* If you have not reached the required percentage of Smaller Business Financings at the end of any fiscal year, then you must be in compliance by the end of the following fiscal year.

§ 107.720 Small Businesses that may be ineligible for Financing.

(a) *Relenders or reinvestors.* You are not permitted to finance any business that is a relender or reinvestor.

(1) *Definition.* Relenders or reinvestors are businesses whose primary business activity involves, directly or indirectly, providing funds to others, purchasing debt obligations, factoring, or long-term leasing of equipment with no provision for maintenance or repair.

(2) *Exception.* You may provide Venture Capital Financing to Disadvantaged Businesses that are relenders or reinvestors (except banks or savings and loans not insured by agencies of the federal government, and agricultural credit companies). Without SBA's prior written approval, total Financings under this paragraph (a)(2) that are outstanding as of the close of your fiscal year must not exceed your Regulatory Capital.

(b) *Passive Businesses.* You are not permitted to finance a passive business.

(1) *Definition.* A business is passive if:

(i) It is not engaged in a regular and continuous business operation (for purposes of this paragraph (b), the mere receipt of payments such as dividends, rents, lease payments, or royalties is not considered a regular and continuous business operation); or

(ii) Its employees are not carrying on the majority of day to day operations, and the company does not provide effective control and supervision, on a day to day basis, over persons employed under contract; or

(iii) It passes through substantially all of the proceeds of the Financing to another entity.